

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:98-cr-00078-MOC

**UNITED STATES OF AMERICA,** )  
  )  
  )  
v.                                    )  ORDER  
  )  
**MICHAEL TIMOTHY SMITH,**     )  
  )  
Defendant.                       )

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**THIS MATTER** is before the court on Defendant Smith's Motion for [Re]consideration of Order Adjusting Sentence to Reflect Time Served on State Sentence (#144). In its prior Order, this Court advised defendant that it lacked jurisdiction to hear the claim under Section 2241 as such a petition would need to be determined in the district of his confinement, which is South Carolina. Apparently, defendant filed a Section 2241 petition years ago, which the Honorable David C. Norton, United States District Judge, denied. See Smith v. Atkinson, 1:13cv2582 (D.S.C. Nov. 11, 2013). That decision was affirmed by the Court of Appeals for the Fourth Circuit, Smith v. Atkinson, No. 13-7954 (4<sup>th</sup> Cir. May 6, 2014), and the Judgment in that matter final and binding on all courts.

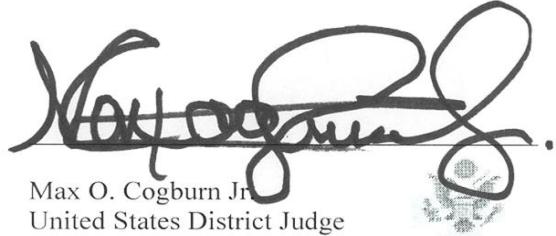
There is, therefore, nothing for this Court to "reconsider" as it appears that defendant has previously raised the claim he has attempted to reassert in this Court and the resolution by the District of South Carolina is final. This Court sitting in the Western District of North Carolina has no authority to revisit a decision made by a colleague in the District of South

Carolina and affirmed by Court of Appeals for the Fourth Circuit. The Court notes that defendant failed to disclose in his earlier Motion for Order Adjusting Sentence (#142) that his Section 2241 claim had already been decided in the District of South Carolina and that such decision was final.

## **ORDER**

**IT IS, THEREFORE, ORDERED** that Defendant Smith's Motion for [Re]consideration of Order Adjusting Sentence to Reflect Time Served on State Sentence (#144) is **DENIED** with prejudice.

Signed: March 31, 2017



A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr.". Below the signature is a small circular official seal or stamp.

Max O. Cogburn Jr.  
United States District Judge